IN THE

Supreme Court of the United States

October Term, 1965

No. 370

ELLIOTT GOLDEN, as Acting District Attorney of the County of Kings,

Appellant,

vs.

SANFORD ZWICKLER,

Appellee.

On Appeal from the United States District Court for the Eastern District of New York

BRIEF OF THE AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*

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Interest of the *Amicus*

The American Jewish Congress, a national organization founded in 1918, is a voluntary association of American Jews committed by its constitution to the dual and, for us, inseparable purposes of defending and extending democracy and preserving our Jewish heritage and its

values. We are convinced that the surest way to preserve our nation and our democracy is to guard jealously the liberties secured by our constitution and Bill of Rights and to oppose any infringements upon those liberties not clearly necessitated by overriding interests.

Freedom of speech and freedom of the press are liberties that are basic to the maintenance and development of our democratic way of life. Punishment for the distribution of anonymous leaflets, which thereby inhibits the expression of ideas, is an encroachment on these essential freedoms. Believing that the statute involved in this case constitutes an infringement upon American liberties that cannot be justified as clearly necessitated by an overriding interest, we submit this brief *amicus curiae* with the consent of the parties.

Statement of the Case

This case arises from the judgment and order of a three-judge court of the United States District Court for the Eastern District of New York, entered on June 18, 1968, declaring §457 of the New York State Election Law to be unconstitutional and enjoining enforcement by the appellant. The statute prohibits the printing or distribution in quantity of anonymous political literature in connection with an election.

Appellant was convicted in 1965 of violating New York Penal Law §781-b (now Election Law §457) by distributing handbills mildly critical of a speech delivered on the floor of the House of Representatives by a United States Con-

gressman standing for reelection at the time of the distribution, 1964. His conviction was reversed on April 23, 1965 by the Appellate Term of the New York Supreme Court on state grounds without reaching the constitutional question. On December 1, 1965 the New York Court of Appeals affirmed without opinion.

On April 22, 1966, appellee invoked the Federal District Court's jurisdiction under the Civil Rights Act, 28 U.S.C. §1343, and the Declaratory Judgment Act, 28 U.S.C. §2201, seeking a declaration that §781-b is unconstitutional and an injunction against its enforcement. Appellee's motion for a three-judge court was granted on May 20, 1966 but his complaint was dismissed by that court on September 29, 1966 on the ground that, under the abstention doctrine, the matter should first be considered by the state courts. *Zwickler* v. *Koota,* 261 F. Supp. 985. This Court, on December 5, 1967, reversed and remanded the case to the District Court. *Zwickler* v. *Koota,* 389 U. S. 241.

On May 6, 1968, the District Court rendered its decision, declaring the New York statute invalid and decreeing injunctive relief to implement the declaration of invalidity (A. 29-57).

Statute Involved

New York Election Law, Sections 457 and 458, read as follows:

§457. Printing or other reproduction of certain political literature

No person shall print, publish, reproduce or distribute in quantity, nor order to be printed, published,

reproduced or distributed by any method any handbill, pamphlet, circular, post card, placard or letter for another, which contains any statement, notice, information, allegation or other material concerning any political party, candidate, committee, person, proposition or amendment to the state constitution, whether in favor of or against a political party, candidate, committee, person, proposition or amendment to the state constitution, in connection with any election of public officers, party officials, candidates for nomination for public office, party position, proposition or amendment to the state constitution without also printing or reproducing thereon legibly and in the English language the name and post-office address of the printer thereof and of the person or committee at whose instance or request such handbill, pamphlet, circular, post card, placard or letter is so printed, published, reproduced or distributed, and of the person who ordered such printing, publishing, reproduction or distribution, and no person nor committee shall so print, publish, reproduce or distribute or order to be printed, published, reproduced or distributed any such handbill, pamphlet, circular, post card, placard or letter without also printing, publishing, or reproducing his or its name and post-office address thereon. A violation of the provisions of this section shall constitute a misdemeanor.

The term "printer" as used in this section means the principal who or which by independent contractual relationship is responsible directly to the person or committee at whose instance or request a handbill, pamphlet, circular, post card, placard or letter is printed, published, reproduced or distributed by such principal, and does not include a person working for or employed by such a principal.

§458. Penalty

Any person convicted of a misdemeanor under this article shall for a first offense be punished by imprisonment for not more than one year, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. Any person convicted of a misdemeanor under this article for a second or subsequent offense shall be guilty of a felony.

The Question Presented

The question to which this brief is addressed is whether a statute making punishable the printing or distribution in quantity of anonymous political literature in connection with an election abridges freedom of speech and press as protected by the First and Fourteenth Amendments.

Summary of Argument

I. The statute challenged here places a restraint on freedom of the press, a right protected by the First Amendment. Consequently, it must be tested against the preferred position given to freedom of expression under the constitution. The supporting interest of the state must be compelling.

II. A prohibition of anonymity effectively restrains freedom of expression. Anonymity has an accepted and proper place in a democratic society. History as well as current practices establish the inhibiting effect on the free expression of ideas of a requirement that the speaker reveal his name.

The protections of the constitution are particularly essential to the expression of unpopular opinion. But even in the absence of evidence that any particular expression is so unpopular as to subject the speaker or publisher to reprisals, the requirement of exposure must be regarded as having a strong tendency to discourage the appearance of new ideas.

III. No compelling interest of the state justifies the restraints imposed by the statute. The denial of anonymity is not a proper end in itself. The statute is not narrowly drawn for the purpose of inhibiting defamation or preventing the disruption of the election process.

ARGUMENT

POINT I

The statute challenged here must be tested against the preferred position given to freedom of speech under the Constitution.

The statute here challenged plainly places a restraint on the exercise of a right protected by the First Amendment, as made applicable to the states by the Fourteenth. It is an express limitation on the distribution of political literature dealing with candidates or propositions in an election. Thus it curbs an activity lying at the core of the political process. As this Court said in *Mills* v. *Alabama*, 384 U. S. 214, 218-9 (1966):

> Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that

> Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated, and all such matters relating to political processes.

Distribution of "hand-bills" or leaflets is a classic mode of exercising freedom of speech and this Court has given full protection to these "historic weapons in the defense of liberty * * *" *Lovell* v. *Griffin,* 303 U. S. 444, 452 (1938); *Schneider* v. *Irvington,* 308 U. S. 147 (1939); *Jamison* v. *Texas,* 318 U. S. 413 (1943). The restraint imposed by the statute is avoided if the person exercising his constitutional right by printing or distributing such political literature places his name and address on what he distributes and the name and address of the person at whose instance he acts. If he does not do so, he is entirely barred from using this method of airing his views. The question, therefore, is whether this restraint on a form of expression is consistent with constitutional requirements.

We are dealing here with limitations on the *manner* of expression, as distinguished from limitations on the *content* of what may be said. Where such limitations are designed to achieve a proper governmental purpose, such as the health, comfort or privacy of the public or their protection against fraud and other misconduct, the courts must determine whether the restraint is so essential to achievement of a proper purpose that the curtailment of a constitutional right is justified. See, e.g., *Schneider* v. *Irvington, supra; Thornhill* v. *Alabama,* 310 U. S. 88 (1940); *Cantwell* v. *Connecticut,* 310 U. S. 296 (1940); *Martin* v. *Struthers,* 319 U. S. 141 (1943); *Prince* v. *Massachusetts,*

321 U. S. 158 (1944); *Kovacs* v. *Cooper*, 336 U. S. 77 (1949); *Breard* v. *Alexandria*, 341 U. S. 622 (1951).

Where, as here, an attempt is made to limit freedom of expression, the "usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." *Thomas* v. *Collins*, 323 U. S. 516, 530 (1945). The right asserted by the appellee is among "those liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society [and which therefore] come to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." Justice Frankfurter, concurring in *Kovacs* v. *Cooper*, *supra*, at 95. Freedom of the press lies "at the foundation of free government by free men. * * * In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." *Schneider* v. *Irvington*, *supra*, 308 U. S. at 161.

As this Court has said of the related First Amendment freedom of association, curtailments must be "subject to the closest scrutiny" and the "subordinating interest of the State must be compelling." *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449, 461 (1958).

POINT II

The prohibition of anonymity contained in the New York statute places a substantial restraint on freedom of expression.

Freedom to speak and write without restraint on political matters is or may be inhibited by a law that bars all anonymous expression in the form of leaflets. This contention is amply supported by the history of political writing in this country.

A. The Place of Anonymity in a Democratic Society

To begin with, it should be recognized that there is nothing inherently wrong in desiring to keep one's name from the public. Anonymity may serve important social objectives. The cause of civilized progress was greatly benefited by the fact that Daniel Defoe could publish anonymously his *Shortest Way with the Dissenters,* and it was correspondingly greatly harmed when Defoe's identity was discovered and he was fined and pilloried for his offense (Minto, *Daniel Defoe* (1909), pp. 38-40).

In this country, even before the founding of our Republic, the practice of speaking anonymously on social and political matters was accepted as normal and proper. Benjamin Franklin signed his first pieces for the *New England Courant* as "Silence Dogwood". (Bleyer, *Main Currents in the History of American Journalism* (1927), pp. 56-57). The use of names like "Philanthrop," "Humanus" and "Cato" as signatures on articles on public affairs was widespread (*Id.,* pp. 43-100). In 1775, Thomas Paine used

the signature "Humanus" in an article for the *Pennsylvania Journal*; after Rev. William Smith, president of the University of Philadelphia, used the name "Cato" in attacking Paine's *Common Sense,* Paine replied under the name of "Forester" (*Id.*, p. 91). The *New Hampshire and Vermont Journal or Farmers Weekly Museum* regularly published articles in the 1790's written by such persons as "The Lay Preacher," "Peter Pencil," "Simon Spunkey," "Peter Pendulum" and "The Pedlar" (*Id.*, p. 128).

The most famous of all American political writings, *The Federalist,* written by Alexander Hamilton, James Madison and John Jay, was published anonymously. Indeed, the attribution of several of the essays is still in doubt. As Professor Earle points out (*The Federalist,* Modern Library Edition (1937), Introduction, p. ix), during the controversy over the endorsement of the Constitution, "The press of the day was submerged with contributions from anonymous citizens." Among those anonymously opposing ratification was New York's Governor George Clinton, who wrote under the name of "Cato" (see the introduction by Paul Leicester Ford to the Henry Holt edition of *The Federalist* (1898), pp. xx-xxi).

Thus, in the early days of our Republic, persons who were or were to become President of the United States, Chief Justice of the Supreme Court, Secretary of the Treasury and Governor of New York did not hesitate to maintain their anonymity in publishing weighty public and political documents.[1]

1. See also Westin, Alan F., *Privacy and Freedom* (1967), p. 331. Professor Westin notes that the First Amendment broke with "the principle of seventeenth-century English licensing laws, which had required books and pamphlets to bear the name of the author and printer."

This practice is still used by public officials. *Foreign Affairs,* the United States' most influential periodical dealing with international policy, has frequently in recent years masked the names of its contributors, carrying leading articles signed simply by single initials, including the famous "X" article, "The Sources of Soviet Conduct," which set forth the Government's policy towards the Soviet Union (Foreign Affairs, Vol. 25, Nos. 1 & 4, Vol. 27, No. 2, Vol. 36, No. 1).

As this Court concluded in *Talley* v. *California,* 362 U. S. 60, 65 (1960):

> It is plain that anonymity has sometimes been assumed for the most constructive purposes.

B. Anonymity as an Aid to Free Expression

Appellant suggests that anonymity is necessary, or desirable, only "in an atmosphere of repression" (Brief, p. 29). However, the debate on the Constitution, to which the anonymous papers in *The Federalist* contributed, was not conducted in such an atmosphere. Moreover, there is ample evidence that denial of anonymity has an inhibiting effect even in today's open society.

Public opinion researchers accept the fact that some persons will hesitate to express themselves freely and honestly if they think that there is a chance that their names will ultimately be associated with the answers they give. In *Interviewing for NORC* (1945), the National Opinion Research Center, which has conducted surveys for many government agencies, advised its employees (p. 15):

> A few persons may be reluctant to talk if they feel their names will be taken. You can explain that NORC *never* wants the name of anyone who doesn't want us to have it.

That the loss of anonymity can have a serious effect on free exercise of opinion is recognized in the book, *How to Conduct Consumer and Opinion Research,* Blankenship, ed. (1946). The essay on "Measurement of Employees' Attitude and Morale" advises employers to place (pp. 223-4)

> * * * emphasis on the point that the questionnaires must not be signed, that no one in the company will have access to the answered questionnaires, that there is no means of identifying a particular person's blank. All of the mechanics of distributing the questionnaire forms and the placing of the answered forms in the ballot box are such as to guarantee anonymity to the employee.

In the same book, the essay on "Trends in Public Opinion Research" describes conclusions drawn by the Office of Public Opinion Research from a comparison of questionnaires answered secretly with others answered by persons who were told that their identity would be known (p. 298):

> Experiments with secret ballots as compared with oral interviews have shown that respondents are not always frank in stating their opinions. An unpopular opinion or one that reflects in any way upon the prestige of the respondent often gets a higher rating in the secret ballot than in oral replies.[2]

2. The original experiments are reported in detail in Cantril, *Gauging Public Opinion* (1944), Chap. V.

In employees' suggestion programs, likewise, it is common practice to set up a system in which the person making the suggestion does not identify himself but receives a numbered receipt from which he may be identified after the suggestion has been considered. In *How To Conduct A Successful Employees' Suggestion System* (p. 9), Ezra S. Taylor rates anonymity as the most important condition for successful suggestion systems.

There are other ways in which modern society recognizes anonymity as a valuable aid in assuring free expression of opinion. It is standard practice for newspapers to print letters signed with initials or fictitious names. While the editors require that the writer disclose his name to them, they recognize that a freer expression of opinion can be achieved if they do not require public exposure of the writer's identity.

Underlying all these practices, anonymous polls, letters to the editors and the like, is the well-founded belief that anonymity in the expression of views contributes to the free play of ideas and hence to the ultimate search for truth, the same search for truth that the founding fathers sought to foster by the guarantees of the First Amendment. As Professor Westin put it:[3]

> Just as a social balance favoring disclosure and surveillance over privacy is a functional necessity for totalitarian systems, so a balance that ensures strong citadels of individual and group privacy and limits both disclosure and surveillance is a prerequisite of liberal democratic societies. The democratic society relies on publicity as a control on government, and on privacy as a shield for group and individual life.

3. *Op. cit. supra,* p. 24.

C. Political Privacy

The value of anonymity, as a guarantee of freedom, is recognized most clearly in the rules governing the act that symbolizes our democracy—the election of public officers. It is not too much to say that the degree of freedom that prevails in a country's election is the surest test of the liberty of its citizens. As Justice Frankfurter pointed out, concurring in *Sweezy* v. *New Hampshire,* 354 U. S. 234, 266 (1957):

> In the political realm as in the academic, thought and action are presumptively immune from inquisition by political authority. It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election. Until recently, no difference would have been entertained in regard to inquiries about a voter's affiliations with one of the various so-called third parties that have had their day, or longer, in our political history.

This right of "political privacy" (*id.* at 267) deserves protection whether exercised through major parties, through minor parties as in *Sweezy* or in *DeGregory* v. *Attorney General of New Hampshire,* 383 U. S. 825, 828-9 (1966), through organizations as in *NAACP* v. *Alabama,* 357 U. S. 449 (1958), or as in the present case, by an individual voicing criticism of a candidate for public office.

D. Protection of Unpopular Opinion

The mantle of protection that the Constitution throws over the right to hold and espouse political, religious and other views is designed primarily for those who adhere to unpopular causes, those who advance the "opinions we

loath" (Justice Holmes, dissenting in *Abrams* v. *United States,* 250 U. S. 616, 630 (1919)). Hence, when basic guarantees of the First Amendment are asserted, they must be interpreted in a manner that insures protection to the advocate of unpopular causes—the advocate who stands to be injured most by enforced disclosure of his identity.

This, we believe, is the principal thrust of this Court's decision in *NAACP* v. *Alabama, supra.* This Court was there concerned with the protection of those who hold "dissident beliefs" (357 U. S. at 462). Although the case involved exposure of organized activity, the reasoning applied equally to individual expression. Indeed, this Court expressly noted that, in asserting the right of anonymity, the Association "argues more appropriately the rights of its members" (*Id.* at 458).

The *NAACP* case established the importance of giving the full protection of the First Amendment guarantees to organized groups which may face hostility from the rest of the community. It is even more important, we believe, to protect the individual speaker against the inhibiting effect of exposure. It is with the single advocate of an idea that all movements begin. And it is while the idea is held only by one or a few persons that anonymity may make the difference between survival or immediate extinction.

In *Talley* v. *California,* 362 U. S. 60, 64 (1960), this Court concluded that there "can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression." We submit that the statute here challenged has, as

well, an unquestionably inhibiting effect on freedom of expression.

Appellant urges that there was no need for anonymity in the circumstances out of which this case grew—that any fear of reprisal on the part of appellee would have been "fanciful" (Brief, p. 30). However, that is not for appellant, representing the state, to say. Whether one requires the cloak of anonymity to loosen expression is a subjective judgment that only the individual can make. If the state were allowed to take over that role, the whole purpose of protecting anonymity when it is needed (and appellant concedes it is sometimes needed (Brief, p. 31)) would be thwarted.

Thus, it is irrelevant whether the views distributed by Zwickler would have been well received by the group to which they were addressed on even whether, objectively viewed, anonymity was necessary. The Bill of Rights is designed to prevent the feeble spark of the untried idea from being quenched by a flood of hostile majority opinion. The speaker should not be required to judge, each time, whether such a flood will occur or whether a court may so decide. As the court below observed, where First Amendment freedoms are involved, the threat of a "penal restraint on utterances blights those freedoms by its very presence" (A. 32).

It is on this point, we submit, that the District Court went astray in *United States* v. *Scott,* 195 F. Supp. 440 (D.C., N.Dak., N.D., 1961), relied on by Appellant (Brief, p. 15). The court there upheld the Federal anti-anonymity law, 18 U.S.C. Sec. 612, which prohibits publication of

anonymous statements about candidates for Federal office. In upholding the statute, the court relied on its conclusion that the defendant's claim that he might be subject to reprisals was highly speculative. It said (at 443): "the mere possibility of reprisal is not enough."

It does not appear, however, that this Court rested its decision in the *NAACP* or *Talley* cases on evidence of threats of reprisals or pressure. Thus, the *NAACP* case stands for the broad principle that "compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . a restraint on freedom of association . . ." (357 U. S. at 462). In the *Talley* case, there is no evidence of any kind of the likelihood of reprisal. It was held to be enough that the identification requirement would tend to restrict freedom of expression. Similarly, in *Gibson* v. *Florida Legislative Investigating Com.*, 372 U. S. 539 (1963), this Court protected the anonymity of the members of an association without any showing of the possibility of reprisal.

POINT III

The interest of the State in the proscription of anonymity does not justify the deterrent effect upon freedom of expression and the interference with political privacy imposed by the New York statute.

Although there are reasons why disclosure of the sources of political literature may be desired in the context of an election campaign, it is necessary to weigh the interests of the State to ascertain whether such interests justify the deterrent effect upon freedom of expression. *Schneider* v. *State of New Jersey, supra.*

A. Denial of anonymity is not a proper end in itself. In *Watkins* v. *United States,* 354 U. S. 178, 187 (1957), this Court said: "There is no general authority to expose the private affairs of individuals without justification in terms of the function of Congress." This concept was reiterated in *Barenblatt* v. *United States,* 360 U. S. 109, 127 (1959), where this Court said: ". . . Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a [valid legislative] purpose." We submit that it is equally true that state and local governments have no power to compel exposure without justification in terms of their own function. Exposure does not justify itself, particularly where its effect restrains freedom of expression.

B. Neither is it appropriate, as Appellant contends (Brief, p. 15), for the State to decide that it must prohibit anonymity in order to enable readers to judge the motives and good faith of the writer. The anonymous writer pays a price for whatever advantage he gains by concealing his name. Most if not all his readers will count his secrecy against him in weighing what they read. On the other hand, it can be argued that anonymity contributes to rational appraisal of arguments since it reduces the element of personal bias. These and other competing factors are part of the free competition of ideas which the State may not constitutionally disturb by tilting the scales.

C. It is sometimes argued that statutes such as the one here involved serve to inhibit defamation by exposing the writer to legal action he might otherwise escape. This jus-

tification must be tested against the principle that legislation limiting expression must be "narrowly drawn to cover the precise situation giving rise to the danger." *Thornhill* v. *Alabama,* 310 U. S. 88, 105 (1940). See also *Aptheker* v. *Secretary of State,* 378 U. S. 500, 508 (1964), and cases there cited. We submit that the statute fails to meet that test. It is overbroad because it prohibits *all* anonymous political literature. It covers leaflets discussing abstract issues as well as those containing personal references.[4] The possibility that some leaflet or handbill may contain libelous matter does not justify the sweeping proscription of all anonymous literature.

It is also argued that, in the context of an election, it is sometimes difficult to identify a source before a choice must be made (Appellant's Brief, pp. 20-21). The New York statute, however, is not restricted to the dissemination of materials immediately prior to an election but applies broadly to any point in time in connection with any election.

Apposite to both these arguments is Justice Harlan's comment, in his concurring opinion in the *Talley* case, *supra,* that, although the restrictive ordinance was aimed at the prevention of fraud, deceit, false advertising, obscenity, libel, etc., ". . . the ordinance is not so limited, and I think it will not do for the State simply to say that the circulation of all anonymous handbills must be suppressed in

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4. Compare the Federal statute, 18 U.S.C., Sec. 612, upheld in *United States* v. *Scott, supra.* That statute is limited to statements about individuals.

order to identify the distributors of those that may be of an obnoxious character" (362 U. S. at 66).[5]

D. Finally, the appellant has not even borne the burden of showing that anonymous publications are so significant a factor in elections as to require this restraint on expression. The history recited in its brief (pp. 21-25) hardly rises to the level of showing a pressing need for restrictions. At most, anonymous literature appears as a minor irritation, creating a desire on the part of many to put an end to it. But more than mere irritation or desire on the part of persons in office is needed to justify this measure. It has not been shown, as it must be, that the free exchange of ideas, the election process or any other proper interest of the state has actually been jeopardized.

We submit, therefore, that New York has shown no more than "mere legislative preferences or beliefs respecting matters of public convenience" which this Court held in the *Schneider* case, *supra*, to be an insufficient response to a claim of constitutional deprivation of freedom of expression.

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5. A number of the decisions upholding state anti-anonymity laws may be distinguished on the ground that the statute involved was more narrowly drawn than that of New York. Thus, the California statute, dealt with in *Canon* v. *Justice Court*, 393 P. 2d 428 (1964), is limited to statements "designed to injure or defeat" a candidate "by reflecting upon his personal character or political action. . . ." In the *Canon* case, this statute was interpreted to apply only to personal attacks on candidates, not impersonal criticism of their views about issues or criticism of their official conduct, such as is involved here. (It should be noted that the statute was invalidated on other grounds.)

Conclusion

The statute here challenged places a restraint on the exercise of the right to freedom of expression, guaranteed against governmental interference by the First and Fourteenth Amendments to the United States Constitution. The restraint imposed is substantial. The State has failed to show sufficient countervailing interests to justify its imposition.

We therefore urge this Court to uphold the decision below that the New York statute is invalid.

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January, 1969

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anonymous handbills which the complaint identified as to be distributed in the 1966 and subsequent elections were the 1964 handbill and "similar anonymous leaflets." On the record therefore the only supportable conclusion was that Zwickler's sole concern was literature relating to the congressman and his record.[5] Since the New York statute's prohibition of anonymous handbills applies only to handbills directly pertaining to election campaigns, and the prospect was neither real nor immediate of a campaign involving the congressman, it was wholly conjectural that another occasion might arise when Zwickler might be prosecuted for distributing the handbills referred to in the complaint. His assertion in his brief that the former congressman "can be a candidate for Congress again" is hardly a substitute for evidence that this is a prospect of "immediacy and reality." Thus the record is in sharp contrast to that in *Evers v. Dwyer*, 358 U. S. 202 (1958), relied upon by the District Court.

It was not enough to say, as did the District Court, that nevertheless Zwickler has a "further and far broader right to a general adjudication of unconstitutionality . . . [in] his own interest as well as that of others who would with like anonymity practice free speech in a political environment . . . ." The constitutional question, First Amendment or otherwise, must be presented in the context of a specific live grievance. In *United Public Workers of America* v. *Mitchell, supra,* at 89–90, we said:

> "The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress

[5] The allegation of the complaint that Zwickler might distribute anonymous handbills relating to "party officials" does not indicate otherwise. The Congressman held an elective party position as a district leader. See 290 F. Supp., at 248.

arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough."

The same is true of the power to pass upon the constitutionality of state statutes. No federal court, whether this Court or a District Court, has "jurisdiction to pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, *except as it is called upon to adjudge the legal rights of litigants in actual controversies.*" *Liverpool, N. Y. and Phil. S. S. Co.* v. *Commissioners*, 113 U. S. 33, 39 (1885). (Emphasis added.) See also *United States* v. *Raines*, 362 U. S. 17, 21 (1960). The express limitation of the Declaratory Judgment Act to cases "of actual controversy" is explicit recognition of this principle.

We conclude that Zwickler did not establish the existence at the time of the hearing on the remand of the elements governing the issuance of a declaratory judgment, and therefore that the District Court should have dismissed his complaint. We accordingly intimate no view upon the correctness of the District Court's holding as to the constitutionality of the New York statute. The judgment of the District Court is reversed, and the case is remanded with direction to enter a new judgment dismissing the complaint.

It is so ordered.